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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the Secretary-General on civil defence forces submitted pursuant to Commission on Human Rights resolution 1992/57

GE.93-10325 (E)

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Introduction

1. At its forty-eighth session, the Commission on Human Rights adopted resolution 1992/57, entitled "Civil defence forces". From that resolution the Commission noting with interest the observations on the matter of civil defence forces contained in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18 and Corr.1) and the apparent increase in such forces throughout the world, particularly in areas of conflict, recognizing that action by such forces had in some cases jeopardized the enjoyment of human rights and fundamental freedoms and that, under exceptional circumstances, when public forces were unable to act owing to the exigencies of situations, there might be a need for the establishment of civil defence forces to protect the civilian population, reaffirming the human rights obligations of States under the Charter of the United Nations and realizing that the individual has a responsibility to strive for the promotion and observance of the rights recognized in the International Covenants on human rights, requested the Secretary-General to seek information from Governments, intergovernmental organizations and non-governmental organizations concerning domestic law and practice relating to civil defence forces and comments concerning the relationship between such forces and human rights. The Commission also requested the Secretary-General to prepare a summary of the information and comments received and to present that summary to the Commission on Human Rights at its forty-ninth session.

2. In connection with resolution 1992/57, and as noted therein, the Secretary-General wishes to draw attention to the consideration of this question by the Working Group on Enforced or Involuntary Disappearances as contained in the following reports of the Working Group: E/CN.4/1992/18, at paragraphs 378 to 381; E/CN.4/1992/18/Add.1 (concerning disappearances in Sri Lanka), at paragraphs 79, 80, 110 to 114 and 204 (m); and E/CN.4/1991/Add.1 (concerning disappearances in the Philippines), at paragraphs 25, 29, 30, 41 to 49, 126, 163 to 165 and 168 (b) and (d).

3. In accordance with the requests of the Commission, the Secretary-General addressed himself, by notes verbales dated 24 July 1992 and by letters of the same date, respectively to all Member States of the United Nations and to the following intergovernmental organizations: the Association of South-East Asian Nations, the Commission of the European Communities, the Council of Europe, the European Parliament, the League of Arab States, the Organization of African Unity, the Organization of American States, the International Organization for Migration and the International Criminal Police Organization (INTERPOL). The Secretary-General also addressed himself directly to relevant subsidiary bodies of certain of the aforementioned intergovernmental organizations. Similarly, on 24 July 1992, letters were sent to a wide selection of non-governmental organizations.

4. To date, the Secretary-General has received responses from the following Member States of the United Nations: Austria, Bahrain, Brazil, Chile, Croatia, Denmark, Egypt, Finland, Guyana, Jamaica, Kazakstan, Kyrgyzstan, Liechtenstein, Malta, Slovenia, Spain, the Syrian Arab Republic, and Trinidad and Tobago. With respect to intergovernmental organizations, the Secretary-General has received responses from the International Criminal Police Organization and the Organization of American States. Responses were

also received from Amnesty International, Human Rights Advocates and the International Institute of Humanitarian Law.

SUMMARY OF RESPONSES RECEIVED BY THE SECRETARY-GENERAL

A. Responses received from Member States of the United Nations

5. The responses received from the Member States of the United Nations may be divided into three groups: (i) those which reported having no information or no such forces; (ii) those which reported having no such forces, but reported on some related legislation; and (iii) those which reported having no such forces, but reported on legislation relating to public emergencies and natural disasters affecting the civilian population. In summarizing these responses, it is pertinent to note that there was a relatively small number of responses (18) from Member States and not all addressed the exact subject of the inquiry.

6. With respect to the first group noted above, the Principality of Liechtenstein reported that it had "no information or observations to present" on the subject, while Austria and Kyrgyzstan reported that they neither had civil defence forces (of the kind described in resolution 1992/57) nor, therefore, did they have provisions in domestic law relating to such forces. Jamaica and Malta reported that they had no special law dealing with the subject. Kazakstan also reported that it had no such law at present, but informed the Secretary-General that it was in the process of developing such a law.

7. With respect to the second group noted above, Guyana and Trinidad and Tobago reported that they had no such forces, but each drew the attention of the Secretary-General to legal institutions which are said to directly relate to the subject. Guyana reported on the competence of the Guyana Police Force (according to the Police Act, Chapter 16:01, Part 11, Article 3) and the competence of the Guyana Defence Force (according to the Defence Act, Chapter 15:01, Part 1, Article 5). Trinidad and Tobago reported that the Defence Act of Trinidad and Tobago (Chapter 14:01) "establishes a Defence Force which is subject to military law, and provides for the defence of the country against an enemy" while the Special Reserve Police Act (Chapter 15:03) establishes forces which "may be called upon to serve in cases of actual aggression or internal disturbance". According to the latter Act (the text of which was supplied in its entirety), the Commissioner of Police "may, whenever additional police may be required for the preservation of good order, the protection of persons or property or the performance of any other duty exercisable by members of the Police Service, call out members of the Special Reserve Police" (section 4 (2)). In this connection, it is to be noted that: the Commissioner of Police and his forces serve under ministerial command (section 6); the powers of members of the Special Reserve Police on duty are restricted to those stipulated in the regular Police Service Act; and members of the Special Reserve Police who commit any proscribed act shall be subject to disciplinary punishments (section 5). The Government of Trinidad and Tobago also pointed out that both the Defence Force and the Special Reserve Police Force are subject to the provisions of the Constitution of Trinidad and Tobago, with Section 4 (pertaining to the fundamental rights and freedoms of the citizenry), Section 5 (prohibiting any law abrogating, abridging or

infringing prescribed fundamental rights and freedoms) and Section 14 (securing a procedural right to remedy for infringement of fundamental rights and freedoms) holding particular relevance in this regard.

8. In a similar fashion to the responses of Guyana and Trinidad and Tobago, but without expressly stating that no such civil defence forces exist as referred to in resolution 1992/57, the Government of Brazil drew the Secretary-General's attention to Chapter III of Brazil's 1988 Federal constitution which stipulates that public security activities can only be performed by the State through the competent authorities. Pursuant to this constitutional prescription, law enforcement and public security are said to be regulated by specific governmental decrees which, in the case of police forces, "have corrective instances aimed at monitoring their activities and, when necessary, punishing abuses of their agents in the discharge of duties". Further, viewed in the context of constitutional provisions prescribing a democratic State under the rule of law and respecting the "human being's dignity" (Article 1 of the Federal Constitution), and given the constitutional proscription of "armed groups action, either civil or military, against the constitutional order and the democratic State" (Article 5, Chapter I, para. XLIV of the Constitution), the Government of Brazil concludes that the "mere existence of such paramilitary forces is, therefore, regarded as a serious threat to the fulfilment of human rights and to the democratic State itself".

9. With respect to the third group noted above, Bahrain, Chile, Croatia, Denmark, Egypt, Finland, Spain and the Syrian Arab Republic reported that they had no such civil defence forces as referred to in resolution 1992/57, but reported on legislation relating to civil forces organized (or to be organized) in response to states of emergency such as wars and natural disasters affecting the civilian population on a significant scale. In connection with the latter, the following legislation was cited:

Bahrain: Legislative Decree No. 5 of 1990;

Chile: Law No. 8,059 of 16 February 1945 and Supreme Decree No. 1,250 of 4 July 1947;

Croatia: Civil Defence Law;

Denmark: Danish Civil Defence Act of 1949, and the Danish Civil Defence Act of July 1982, as amended;

Egypt: Civil Defence Act No. 148 of 1959, as amended by Acts Nos. 10 of 1965, 175 of 1981 and 107 of 1982, together with the relevant implementing regulations;

Finland: Civil Defence Act based on Article 75 of the Constitution Act of Finland;

Spain: Law 2/1985, of 21 January, concerning Civil Protection, and Royal Decree 409/1992 of 24 April;

Syrian Arab Republic: Civil Defence Act No. 148 of 1959, together with "the regulations concerning self-defence at institutions in the Syrian Arab Republic as promulgated by the Prime Minister's Office in 1982".

10. Reflecting the common nature of the responses referred to above, the Government of Bahrain reported, in part, as follows:

> "In Bahrain Civil Defence is based upon the concept, common in the region, of community cooperation in disaster control such as fire fighting, maintenance of essential services, supply of food, water, shelter, medical supplies and so on.
>
> "Although Police and regular Armed Forces have obvious roles to play in Civil Defence cooperation, nevertheless Civil Defence responsibilities in Bahrain do not involve direct Military or Security operations as such."

11. In keeping with this description, the Governments of Croatia, Finland and the Syrian Arab Republic explicitly stated that forces organized in accordance with their legislation in this area are unarmed. The Government of Spain went further in advising that, under Spanish law, the concept of a "civil defence force ... neither exists nor can exist" (emphasis in the original).

B. Responses received from intergovernmental organizations

12. Responses were received from INTERPOL OAS. While the former advised that it had no information or comments to submit, the latter forwarded the Secretary-General's letter of 24 July 1992 to the Inter-American Commission on Human Rights which responded by submitting a copy of its 1991 Annual Report.

13. In submitting that document, the Inter-American Commission on Human Rights drew the Secretary-General's attention to Chapter III ("Reports on Individual Cases"), Chapter IV ("Situation of Human Rights in Several States") and Chapter V ("Areas in which Steps Need to Be Taken Towards Full Observance of the Human Rights Set Forth in the American Declaration of the Rights and Duties of Man and the American Convention of Human Rights"). However, beyond the general references contained within the section entitled "Groups of Armed Irregulars and Human Rights" (section II of Chapter V), there was no explicit or specific treatment of the problem of civil defence forces as understood in relation to Commission resolution 1992/57. Indeed, while the report of the Inter-American Commission on Human Rights acknowledged that there is "a very complex picture" relating to situations of armed irregulars (p. 504), and in so far as the General Assembly of the Organization of American States has adopted a resolution (AG/RES. 1043 (XX-0/90)) responding to "the increase in indiscriminate and selective violence perpetrated by irregular armed groups in some states of the hemisphere", the concern of the OAS and the Inter-American Commission centres on the actions of non-governmental entities "engaged in common crime whose illicit activities have enabled them to arm themselves with everything they need to take on the State's security forces" (p. 504). These activities are said to take place in the context of acts of terrorism perpetrated by insurgent groups or, for example, drug traffickers (pp. 508-514). Acts perpetrated by locally organized armed forces charged

with the defence of their communities, i.e. acting under the direction of governmental authorities and, presumably, law, are not addressed.

C. Responses received from non-governmental organizations

1. Response received from Amnesty International

14. The response of Amnesty International drew attention to references relating to the use of civil defence forces in 18 recent (1991 and 1992) reports concerning the following 10 countries: Bangladesh, Bosnia and Herzegovina, Colombia, Guatemala, Haiti, Peru, the Philippines, Sri Lanka, Turkey and the former Yugoslavia.

15. The following civil defence forces, of the kind mentioned in Commission resolution 1992/57, were specifically referred to in the Amnesty International reports:

Bangladesh: the Village Defence Party, the "paramilitary Ansars", and the "paramilitary Bangladesh Rifles" (see AI INDEX: ASA 13/04/92 of May 1992 at page 3);

Colombia: unnamed "paramilitary forces" and "self-defence" groups located in various specified regions and whose "leaders reportedly claim to be operating with the consent and support of regional army commanders and civilian authorities" (see AI INDEX: AMR 23/69/91 of December 1991 at page 15);

Bosnia and Herzegovina: "a variety of paramilitary groups fighting on both sides", including inter alia the Serbian "Arkan", "Croatian paramilitaries, members of the HOS (Croatian Defence Forces)", the so-called Serbian "Cetniks", the so-called Croatian "Ustasa", and the so-called "Muslim fundamentalists" (see AI INDEX: EUR 63/01/92 of October 1992 at pages 7-10);

Guatemala: Patrullas de Autodefensa Civil (PAC - Civil Self-Defence Patrols), described as "civilian auxiliaries of the Guatemalan armed forces" (see AI INDEX: AMR 34/20/92 of May 1992 at page 3, note 2), and "uniformed private policemen" said to "operate under licence from the National Police and the Ministry of the Interior" (see AI INDEX: AMR 34/24/91 of June 1991 at page 2);

Peru: Montoneros, rondas de defensa civil or rondas campesinas (civil defence patrols) serving Civil Defence Committees reportedly under "political-military" command (see AI INDEX: AMR 46/56/91 of November 1991 at pages 21-22);

Philippines: the former "paramilitary" Philippine Constabulary, the "official paramilitary auxiliary" Citizens' Armed Forces Geographical Units (CAFGUs) and Special CAFGU Active Auxiliaries (SCAAs), Civilian Self-Defence Organizations (CVOs) and "various semi-official 'vigilante' groups operating with the support or acquiescence of military commanders" such as KADRE and the "Alsa Masa" (see AI INDEX: ASA 35/05/91 of February 1991 at pages 6-7, AI INDEX: ASA 35/16/91 of June 1991 at pages 7-12, and AI INDEX: ASA 35/01/92 of February 1992 at pages 19-22);

Sri Lanka: the "Muslim home guards" organized pursuant to the Mobilisation and Supplementary Forces Act, 1985, which is said to provide for "the establishment of a National Auxiliary Force, the Home Guards and a Civil Defence Force" (see AI INDEX: ASA 37/10/92 of June 1992 at pages 1-2);

Turkey: "village guards" which are described as "a paramilitary force set up to act as a local militia against the PKK" (see AI INDEX: EUR 44/66/92 of August 1992 at page 1; the PKK is the Kurdish Workers' Party);

(former) Yugoslavia: "paramilitary forces", "local armed formations", "Ustasa", "Cetniks", "Serbian paramilitaries operating with, or in the wake of, the Yugoslav National Army (JNA)", "Croatian paramilitaries", "Serbian paramilitary forces, led by several (named) local Serbs from Lovas and Tovarnik", the "White Eagles", and "Arkan's men" (see, throughout, AI INDEX: EUR 48/26/91 of November 1991 and AI INDEX: EUR 48/13/92 of March 1992).

16. In evaluating the human rights violations allegedly committed by these forces in the various countries, Amnesty International frequently observed the importance of maintaining government control, with proper command structures, and made reference to the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990.

2. Response received from Human Rights Advocates

17. The response received from Human Rights Advocates addresses the problem of civil defence forces in Guatemala. The 41 page submission is divided into four sections, the first three of which address, successively, "the 'need' for civil defence forces in Guatemala", "Guatemalan domestic law relating to civil defence forces", and how "Guatemalan civil defence forces jeopardize the enjoyment of human rights and fundamental freedoms". Conclusions are offered

in a fourth section. A brief preface to the submission cites the existence of the Civilian Self-Defence Patrols, Civil Patrols or "PACs" (as they are known by their Spanish initials) in Guatemala as giving rise to the report.

18. In examining the "need" for civil defence forces in Guatemala, Human Rights Advocates notes that the Government of Guatemala created the Civil Patrols by decree in an effort to restore law and order during what it characterized as exceptional circumstances in mid-1982. Specifically, the Civil Patrol system is said to have "the purported goal of combating anti-government guerillas" (p. 2). However, Human Rights Advocates assert that the patrols have been "ineffective in ensuring the safety of the rural population" (p. 3) and, moreover, the state of emergency under which the patrols were created came to an end in 1983. Further, in noting that the number of guerillas in the country has diminished considerably, while hundreds of thousands of patrollers remain, it is argued that "there is ample evidence that the Patrols are no longer necessary, if indeed they ever were" (p. 4).

19. In the second section of its submission, Human Rights Advocates adjust their earlier statement to note that the Civil Patrols were created "not by formal decree or law, but by military edict of General Rios Montt", then President of the Republic (p. 5). Some years later, the Government of Oscar Mejía Victores is reported to have "issued a formal decree, Decree 19-86, which attempted to provide a legal basis for the Civil Patrol system" (ibid.). Described in the Decree as a "voluntary" force "of eminently civil disposition", article 1 of the Decree nevertheless places them under the coordination of the Ministry of Defence. Irrespective of the alleged conceptual shortcomings of the Decree, it is also noted that, according to Article 7, the implementation of the law was to be accompanied by the issuance of regulations within 60 days of the Decree's promulgation - a legal obligation which has reportedly never been fulfilled by the authorities (p. 6). On one specific aspect relating to the formation of Civil Patrols, it is observed that conscription or any obligatory service in the Civil Patrols would violate article 34 of the 1986 Constitution of Guatemala. However, Human Rights Advocates argues that the "truth is that service is forced by way of threats, intimidation, and other extrajudicial sanctions" (p. 7).

20. Section III of the submission, constituting the largest part of the report and running some 32 pages, recounts a variety of alleged abuses of human rights attributed to the Civil Patrols of Guatemala. In reviewing the alleged violations, the section is divided into six subsections addressing, in order, the following issues: A. The rights to life, liberty, security of the person, and freedom from torture; B. The rights to freedom from slavery, servitude, compulsory labour, and forced assimilation; C. Freedom of thought, conscience, religion, and opinion; D. The right to equality, freedom from discrimination, and equal access to the judicial system; E. The right to freedom of movement; and F. Special protection of children. While numerous types, methods and instances of alleged violations are recounted through the pages, by far the largest number of such violations is found under the first two subsections.

21. In its conclusions, Human Rights Advocates make the determination that "the Guatemalan Civil Patrols systematically violate not only domestic law, but also many of the basic human rights guaranteed to all people" (p. 40). In

this connection, Human Rights Advocates cite the Commission on Human Rights report rendered by the independent expert, Mr. Christian Tomuschat, which concludes that "the civilian self-defence patrols should be abolished forthwith" (E/CN.4/1992/5, para. 193). Human Rights Advocates call upon the Commission on Human Rights to "do everything possible to hasten the abolition of the Guatemalan Civil Patrols" (p. 41).

3. Response received from the International Institute of Humanitarian Law

22. The International Institute of Humanitarian Law, located at San Remo, Italy, reported on a seminar, it had held in April 1990 in cooperation with the Italian Red Cross. Judging from the Introductory Report and Summary of Conclusions from the international seminar entitled "Protection of Human Life and Civil Defence", the essential subject and concern of the seminar related to "dangers to human life caused by extraordinary events, various types of disasters, both man-made and caused by natural forces". The seminar, however, did not consider the specific problem of civil defence forces in the sense of resolution 1992/57.

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